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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

JAMES ROSE, Individually And On
Behalf Of All Others Similarly Situated.

Case No. CV11-03701 DMG
(MRWx)

Plaintiff,

vs.

DEER CONSUMER PRODUCTS,
INC., YING HE, YUEHUA XIA,
ZONGSHU NIE, EDWARD HUA,
ARNOLD STALOFF, QI HUA XU,
YONGMEI WANG, MAN WAI
JAMES CHIU, AND WALTER ZHAO.

Defendants.

**MEMORANDUM IN
SUPPORT OF EDWARD
GUTMAN'S MOTION TO BE
APPOINTED LEAD
PLAINTIFF AND FOR
APPROVAL OF LEAD
PLAINTIFF'S CHOICE OF
LEAD COUNSEL.**

Date: August 1, 2011

Time: 9:30 a.m.

Judge: Honorable Dolly M. Gee

Ctrm: 7- Spring St.

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INTRODUCTION

Movant respectfully submits this memorandum pursuant to Section 21D(a)(3)(B) of the Securities Exchange Act of 1934 (the "Exchange Act"), as amended by the Private Securities Litigation Reform Act of 1995 ("PSLRA"), for entry of an order appointing him as the Lead Plaintiff in this class action, and approving Mr. Gutman's choice of counsel as Lead and Liaison Counsel for the Class.¹

Mr. Gutman has suffered losses of approximately \$69,125.00 from his acquisition of Deer Consumer Products, Inc. ("Deer" or the "Company") common stock. He believes that he has sustained the largest loss of any qualified investor seeking to be appointed lead plaintiff for the class action. Mr. Gutman will ensure that the litigation is conducted in the best interests of the members of the class and is not subject to any unique defenses that would render him incapable of adequately representing the class. Mr. Gutman understands his responsibilities to the class, and is willing and able to oversee the prosecution of this action.

Therefore, Mr. Gutman respectfully requests that the Court grant his motion to be appointed lead plaintiff, and approve his selection of lead counsel.

¹ The federal securities laws specifically authorize class members, regardless of whether they have filed a complaint, to move for appointment of lead plaintiff. 15 U.S.C. § 78u-4(a)(3)(B). A copy of Movant's certification setting forth his transactions in the Company's common stock is attached as Exhibit B to the Declaration of Lionel Z. Glancy ("Glancy Decl.") in Support of Edward S. Gutman's Motion To Be Appointed Lead Plaintiff And For The Approval Of Lead Plaintiff's Choice Of Lead Counsel filed herewith.

1 **I. FACTUAL BACKGROUND**

2 Deer designs, manufactures and sells small home and kitchen electric
 3 appliances worldwide. Deer's common stock trades on the NASDAQ under the
 4 symbol "DEER". This action alleges claims for violations of Sections 10(b) and
 5 20(a) of the Exchange Act and Securities and Exchange Commission ("SEC") Rule
 6 10b-5 promulgated thereunder during the period from March 31, 2009 to March 21,
 7 2011 (the "Class Period"). Defendants include Deer, Ying He, Yuehua Xia,
 8 Zongshu Nie, Edward Hua, Arnold Staloff, Qi Hua Xu, Yongmei Wang, Man Wai
 9 James Chiu, and Walter Zhao (the "defendants").

10 The complaint alleges that defendants violated Sections 10(b) and 20(a) of the
 11 Securities Exchange Act of 1934, and Rule 10b-5 promulgated thereunder, by
 12 issuing a series of material misrepresentations during the Class Period thereby
 13 artificially inflating the price of Deer securities. The complaint alleges that the
 14 Company's Form 10-Ks for its years ended December 31, 2008, December 31,
 15 2009, and December 31, 2010 and the Form 10-Qs for the quarters ended March 31,
 16 2009, June 30, 2009, September 30, 2009, March 31, 2010, June 30, 2010,
 17 September 30, 2010, final prospectus on Form 424B filed December 10, 2009, and
 18 the Form 10-K/A, filed on June 18, 2010 and amending the Company's annual
 19 report for fiscal year 2009 were all materially false and misleading because the
 20 financial statements included in each document did not fairly present the financial
 21 condition, results or operations of the Company. The complaint alleges that
 22 defendants made material misstatements and omitted information regarding the
 23 related party transactions initiated by the Company's CEO and concerning earnings
 24 generated by the Company's operating subsidiaries. Upon the March 9, 14, and 21
 25 releases of the investigative research by an analyst, Alfred Little, the market learned
 26 of the fraud perpetrated by the defendants and as a result, Deer's shares dropped at
 27 least 21%, damaging shareholders.

1 **II. PROCEDURAL HISTORY**

2 Plaintiff James Rose filed this action, the only filed related case, on April 29,
 3 2011, and on April 29, 2011 counsel for plaintiff Rose published a notice of
 4 pendency of plaintiff's case over Business Wire. See Glancy Decl. Ex. A. Movant
 5 brings the instant motion pursuant to plaintiff Rose's notice of pendency, and files
 6 this motion prior to the expiration of the 60-day period from publication of the April
 7 29, 2011, notice.

8 **III. ARGUMENT**

9 **A. The Movant Should Be Appointed Lead Plaintiff**

10 **1. The Procedures Required By The PSLRA**

11 Section 21D of the Exchange Act, as amended by the PSLRA, sets forth the
 12 procedure for the selection of Lead Plaintiff to oversee class actions brought under
 13 the federal securities laws. Specifically, §21D(a)(3)(A)(i) provides that within 20
 14 days after the date on which the first class action is filed under the PSLRA, the
 15 plaintiff shall cause to be published, in a widely circulated national
 16 business-oriented publication or wire service, a notice informing class members of
 17 the action and their right to file a motion for the appointment of lead plaintiff.

18 The PSLRA provides that within 60 days after the publication of the notice,
 19 any person or group of persons who are members of the proposed class may apply to
 20 the court to be appointed Lead Plaintiff. 15 U.S.C. §78u-4(a)(3)(A)(i)(II). Section
 21 21D(a)(3)(B) of the Exchange Act directs the Court to consider any motions by a
 22 plaintiff or purported class members to serve as Lead Plaintiff in response to any
 23 such notice by not later than 90 days after the date of publication pursuant to §21D,
 24 or as soon as practicable after the Court decides any pending motion to consolidate
 25 any actions asserting substantially the same claim or claims. Under this section the
 26 Court shall consider any motion made by a class member and shall appoint as lead
 27 plaintiff the member or members that the Court determines to be most capable of
 28 adequately representing the interests of class members.

,1 In determining the “most adequate plaintiff” the PSLRA provides that:

2 [T]he Court shall adopt a presumption that the most
3 adequate plaintiff in any private action arising under this
4 title is the person or group of persons that –

5 (aa) has either filed the complaint or made a motion in
6 response to a notice . . .;

7 (bb) in the determination of the court, has the largest
8 financial interest in the relief sought by the class; and

9 (cc) otherwise satisfies the requirements of Rule 23 of the
10 Federal Rules of Civil Procedure.

11 §21D(a)(3)(B)(iii)(I); 15 U.S.C. §78u-4(a)(3)(B)(iii)(I).

13 **2. The Movant Has Complied With The PSLRA**

14 The first complaint filed against defendants was the *Rose v. Deer Consumer*
15 *Products, Inc., et al.*, 11-cv-03701, which was filed on April 29, 2011. On April 29,
16 2011, a notice was published on Business Wire that informed potential class
17 members of the pendency of the action and their right to move to be appointed lead
18 plaintiff and to designate their choice of lead counsel within 60 days. Exhibit A to
19 Glancy Decl.

20 The time period in which class members may move to be appointed lead
21 plaintiff herein under 15 U.S.C. §78u-4(a)(3)(A) and (B) expires on June 28, 2011.
22 Pursuant to the PSLRA, and within the requisite time frame after publication of the
23 required notice, the Movant herein timely moves this Court to be appointed Lead
24 Plaintiff on behalf of all members of the class.

25 The Movant signed a certification stating that the Movant reviewed a
26 complaint filed in the Action, and is willing to serve as a representative party on
27 behalf of the Class. Glancy Decl., Exh. B. The certification demonstrates that the
28 Movant has suffered losses of approximately \$69,125.00 in connection with his

1 purchases of Deer common stock. The Movant is a motivated shareholder who has
 2 expressed his willingness to pursue this litigation and will pursue this matter. In
 3 addition, the Movant has selected and retained experienced and competent counsel
 4 to represent him and the Class. Glancy Decl. Exhs. C and D.

5 **3. The Movant Has The Largest Financial Interest
 6 In The Action**

7 The PSLRA requires a court to adopt a rebuttable presumption that “the most
 8 adequate plaintiff... is the person or group of persons that ... has the largest
 9 financial interest in the relief sought by the class.” 15 U.S.C. §78u-4(a)(3)(B)(iii).
 10 In addition, the Exchange Act §21D(a)(3)(B) provide that the most adequate Lead
 11 Plaintiff is presumed to be the “person or group of persons” that, among other
 12 things,” has the largest financial interest. The statutory language explicitly provides
 13 that a “member or members” of the class or the “person or group of persons” may
 14 combine to constitute “the largest financial interest” and thereby jointly serve as the
 15 “most adequate plaintiff.” *Id.*

16 Here, the certification demonstrates that Movant purchased Deer stock at
 17 prices artificially inflated by defendants’ false and misleading statements and
 18 suffered losses of approximately \$69,125.00.² Glancy Decl., Exh. B. To the best of
 19 his knowledge, Mr. Gutman has the largest financial interest in the relief sought by
 20 the Class. Mr. Gutman therefore, is presumptively the most adequate plaintiff
 21 pursuant to the PSLRA. 15U.S.C. §78u-4(a)(3)(B)(iii)(I)(bb). Moreover, the
 22 Movant has expressed a desire and willingness to serve as a lead plaintiff in this

24 ² Pursuant to §21D(e)(1) of the 1934 Act, the damages for Plaintiff holding
 25 their shares through the end of the class period are calculated as “the difference
 26 between the purchase or sale price paid or received and the mean trading price of
 27 Deer during the 90 day period beginning on the date o which the information
 28 correcting the misstatement or omission that is the basis for the action is
 disseminated to the market.” 15 U.S.C. §78u-4(e)(1). This mean trading price for
 the 90-day period following March 21, 2011 is estimated at \$7.95.

1 action. Because Mr. Gutman has suffered approximately \$69,125.00.00 in losses,
 2 he is presumptively the most-adequate Lead Plaintiff.

3 **4. The Movant Otherwise Satisfies Rule 23**

4 In addition to possessing the largest financial interest in the outcome of the
 5 litigation, the PSLRA provides that the Lead Plaintiff must also “otherwise satisfy
 6 the requirements of Rule 23 of the Federal Rules of Civil Procedure.” 15 U.S.C.
 7 §78u-4(a)(3)(B)(iii)(I)(cc). With respect to the qualifications of the class
 8 representative, Rule 23(a) requires that the claims be typical of the claims of the
 9 class and that the representative will fairly and adequately protect the interests of the
 10 class. As detailed below, Movant satisfies the typicality and adequacy requirements
 11 of Rule 23(a).

12 **(a) The Claims Of The Movant Are Typical
 13 Of The Claims Of The Class**

14 The typicality requirement of Rule 23(a)(3) is satisfied when a named
 15 plaintiff has: (a) suffered the same injuries as the absent class members; (b) as a
 16 result of the same course of conduct by defendants; and their claims are based on the
 17 same legal issues. *Schlagal v. Learning Tree Int'l.*, No. CV 98-6384 (ABC), 1999
 18 U.S. Dist. LEXIS 2157 *8 (C.D. Cal. Feb. 23, 1999) (the typicality requirement is
 19 met “if the representatives’ claims stem from the same event or course of conduct as
 20 other class members’ claims and are based on the same legal theory as the absent
 21 members”); *Slaven v. BP America, Inc.*, 190 F.R.D. 649, 655 (C.D. Cal. 2000) (a
 22 party satisfies the typicality standard where his claims stem from the same event or
 23 course of conduct as other class members’ claims and are based on the same legal
 24 theory).

25 The questions of law and fact common to the class members here, which
 26 predominate over questions that may affect individual claims, include: (a) whether
 27 the federal securities laws were violated by defendants’ acts; (b) whether
 28 defendants’ statements during the Class Period omitted and/or misrepresented

1 material facts; (c) whether the defendants acted intentionally or recklessly; (d)
 2 whether the market price of Deer stock was artificially inflated due to the activities
 3 complained of; and (e) the extent of damages class members sustained and the
 4 appropriate measure of those damages. Mr. Gutman's claims are typical of the
 5 claims of the members of the proposed class. The Movant, as do all members of the
 6 class, assert that certain of the Company's directors and high ranking officers
 7 violated the Exchange Act by publicly disseminating false and misleading
 8 statements, and by failing to disclose material adverse facts about Deer. Further, the
 9 Movant, as did all of the members of the proposed class, acquired Deer stock at
 10 prices inflated by defendants' misrepresentations and omissions and was damaged
 11 thereby. The typicality requirement is satisfied here because the claims asserted by
 12 the Movant are based on the same legal theory and arise from the same event or
 13 practice or course of conduct that gives rise to the claims of the class members, and
 14 is based on the same legal theory. *Slaven*, 190 F.R.D. 649 (C.D. Cal. 2000).

15 **(b) The Movant Will Adequately Represent The Interests Of The Class**

16 The adequacy of representation requirement of Rule 23 is satisfied where it is
 17 established that a representative party "will fairly and adequately protect the
 18 interests in the class." Accordingly:

19 The Ninth Circuit has held that representation is "adequate when
 20 counsel for the class is qualified and competent, the representative's
 21 interests are not antagonistic to the interests of absent class members,
 22 and it is unlikely that the action is collusive.

23 *Takeda v. Turbodyne Techs. Inc.* 67 F. Supp. 2d 1129, 1137 (C.D. Cal. 1999). The
 24 interests of Movant are clearly aligned with the members of the proposed class.
 25 There is no evidence of any antagonism between Movant and the proposed class
 26 members. As detailed above, the Movant shares substantially similar questions of
 27 law and fact with the members of the proposed class, his claims are typical of the
 28 members of the class, and he has taken significant steps to advance this litigation.

1 In addition, Movant has amply demonstrated his adequacy to serve as class
2 representative by signing a certification affirming his willingness to serve as, and
3 assume the responsibilities of class representative. Finally, Movant has selected and
4 retained counsel highly experienced in prosecuting securities class actions such as
5 this to represent them. For these reasons, the Movant should be appointed Lead
6 Plaintiff in the consolidated action.

7 **C. This Court Should Approve**

8 **The Movant's Choice Of Lead Counsel**

9 The PSLRA vests authority in the Lead Plaintiff to select and retain Lead
10 Counsel, subject to court approval. §21D(a)(3)(B)(v). The Movant selected the law
11 firm of Abbey Spanier Rodd & Abrams, LLP ("Abbey Spanier") to serve as Lead
12 Counsel and the law firm of Glancy Binkow & Goldberg LLP to serve as Liaison
13 Counsel. These firms have extensive experience in the area of securities litigation
14 and have successfully prosecuted numerous securities fraud class actions on behalf
15 of injured investors. Glancy Decl., Exhs. C and D.

16 **IV. CONCLUSION**

17 For the foregoing reasons, the Movant respectfully requests that the Court: (i)
18 appoint the Movant as Lead Plaintiff in the consolidated action; and (ii) approve
19 Lead Plaintiff's choice of Abbey Spanier Rodd & Abrams, LLP to serve as Lead
20 Counsel and Glancy Binkow & Goldberg LLP to serve as Liaison Counsel.

21 Dated: June 28, 2011

22 **GLANCY BINKOW & GOLDBERG LLP**

23 By: 

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PROOF OF SERVICE VIA U.S. MAIL

I, the undersigned, say:

I am a citizen of the United States and am employed in the office of a member of the Bar of this Court. I am over the age of 18 and not a party to the within action. My business address is 1801 Avenue of the Stars, Suite 311, Los Angeles, California 90067.

On June 28, 2011, I caused to be served the following document:

**MEMORANDUM IN SUPPORT OF EDWARD GUTMAN'S MOTION
TO BE APPOINTED LEAD PLAINTIFF AND FOR APPROVAL OF
LEAD PLAINTIFF'S CHOICE OF LEAD COUNSEL**

On the following parties:

See Attached Service List.

By Mail: By placing true and correct copies thereof in individual sealed envelopes, with postage thereon fully prepaid, which I deposited with my employer for collection and mailing by the United States Postal Service. I am readily familiar with my employer's practice for the collection and processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, this correspondence would be deposited by my employer with the United States Postal Service that same day.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on June 28, 2011, at Los Angeles, California.



Harry H. Kharadjian

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